



March 18, 2002

Ms. Cathy Bradford
Open Records Coordinator
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2002-1316

Dear Ms. Bradford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159920.

The Texas Parks and Wildlife Department (the "department") received a request for records pertaining to any land transactions between the Big Bend State Park and Lajitas Resort, including its owner Steven Smith or any corporation in which Mr. Smith is either the sole or majority owner/shareholder. The requestor also asks for records pertaining to any discussions by State Park officials in the last year about the possibility of closing or moving the Barton Warnock Center. You claim that the submitted information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code.

As a threshold matter, we note that section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982).

You state that you sought clarification from the requestor as to the type or nature of the documents being requested. See Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request). The ten-day deadline for requesting a decision from this office was tolled only during that time that the department was awaiting a response to its clarification request. See Open Records Decision No. 663 at 5 (1999). The request was received by the department on December 11, 2001. On December 20, 2001, you sent the requestor a letter advising her that there have been no discussions about the possibility of

closing or moving the Barton Warnock Center. You also asked for clarification on the request for information pertaining to land transactions. You state that on January 7, 2002, you received clarification from the requestor; consequently, the ten day period resumed on January 7. You submitted your request for a decision from this office on January 8, 2002. Accordingly, we conclude that you timely requested a decision from this office pursuant to section 552.301 of the Government Code.

Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 was designed to protect a governmental body's planning and negotiating position with respect to particular transactions. Open Records Decision No. 564 at 2 (1990). This exception protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or aborted. Open Records Decision Nos. 357 at 3 (1982), 310 at 2 (1982). When a governmental body has made a good faith determination that the release of information would damage its negotiating position with respect to the acquisition of property, this office will accept that determination, unless the records or other information show the contrary as a matter of law. Open Records Decision No. 564 (1990). Furthermore, this exception extends to "information relating to" the location, appraisals, and purchase price of property and may protect more than a specific appraisal report prepared for a specific piece of property. *Id.* You state that release of the submitted information "would damage [your] negotiating position with respect to the future acquisition of the property in question." Upon review of the submitted information, we determine that the information relates to "the location of real or personal property for a public purpose prior to public announcement of the project." Therefore, the submitted information may be withheld pursuant to section 552.105.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

¹In light of our conclusion, we need not address your section 552.111 claim.

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

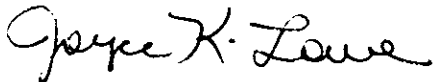
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Joyce K. Lowe".

Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 159920

Enc: Submitted documents

c: Ms. Patricia Kerns
P.O. Box 183
Terlingua, Texas 79852
(w/o enclosures)